

**Housing and Property Chamber**  
First-tier Tribunal for Scotland

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**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016.**

**Chamber Ref: FTS/HPC/EV/19/0775**

**Re: Property at 28 Lorimer Street, Second Floor Left, Dundee, DD3 6SA ("the Property")**

**Parties:**

**Area Estates Limited, c/o Pavillion Properties, 86 Bell Street, Dundee, DD1 1HN ("the Applicant")**

**Mr Garry Duncan, 28 Lorimer Street, Second Floor Left, Dundee, DD3 6SA ("the Respondent")**

**Tribunal Members:**

**Shirley Evans (Legal Member)**

**Decision (in absence of the Respondent)**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that an order against the Respondent for possession of the Property under Section 51(1) of the Private Housing (Tenancies) (Scotland) Act 2016. **The order will be issued to the Applicant after the expiry of 30 days mentioned below in the right to appeal section unless an application for recall, review or permission to appeal is lodged with the Tribunal by the Respondent.**

The order will include a power to Officers of Court to eject the Respondent and family, servants, dependants, employees and others together with their goods, gear and whole belongings forth and from Property and to make the same void and redd that the Applicant or others in their name may enter thereon and peaceably possess and enjoy the same.

**Background**

1. By application dated 5 March 2019 the Applicant's representative, Pavillion Properties, applied to the First-tier Tribunal for Scotland (Housing and

Property Chamber) ("the Tribunal") for an order for recovery of possession of the Property.

2. On 8 April 2019 the Tribunal gave notification of acceptance of the application to the Applicant.
3. On 24 April 2019 the Tribunal enclosed a copy of the application and invited the Respondent to make written representation to the Tribunal by 14 May 2019. The Tribunal advised parties on 24 April that a Case Management Discussion under Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Regulations") would proceed on 23 May 2019. This paperwork was served on the Respondent by Grant Lumsden, Sheriff Officer, Livingston, on 26 April 2019 and a certificate of service was received by Tribunal administration.
4. The Respondent did not make any written representations by 14 May 2019.

#### **Case Management Discussion**

5. The Tribunal proceeded with the Case Management Discussion on 23 May 2019. The Applicant was represented by Ms Christison from Pavillion Properties. Mr Baxter from Pavillion Properties attended as an observer. There was no appearance by or on behalf of the Respondent. The Tribunal was satisfied that the Respondent was aware of the Case Management Discussion and decided to proceed in his absence.
6. The Tribunal had before it a Private Residential Tenancy Agreement ("the Tenancy Agreement") between the Applicant and the Respondent signed and dated 1 March 2018, a Notice to Leave with covering email dated 4 December 2018 addressed to the Respondent, a rent statement and Notice under Section 11 of the Homelessness etc. (Scotland) Act 2003 addressed to Dundee City Council dated 4 December 2018.
7. The Tribunal noted that the parties had entered into the Tenancy Agreement on 1 March 2018 in relation to the Property. In terms of Clause 8 the Tenancy Agreement the Respondent agreed to pay a monthly rent of £450 to the Applicant. The Tribunal noted that a Notice to Leave had been served by email on the Respondent on 4 December 2019 which the Applicant was entitled to do in terms of the Tenancy Agreement.
8. Ms Christison explained to the Tribunal that in the run up to the service of the Notice to Leave she had been in contact with the Respondent. The Respondent had originally been employed but then lost his job. When arrears started to accrue in June 2018 she had contacted the Respondent and provided him with all the information he needed to apply for Universal Credit. However since then she has heard nothing from the Respondent and has been unable to get any information from Universal Credit as the Respondent had not allowed them to discuss matters with her.

9. With reference to the rent statement she pointed out that two payments from Dundee City Council to the Respondent's rent account had been made, namely one payment of £700 on 17 January 2019 and one of £46.15 on 4 February 2019. That was the last payment to account. She had attempted to contact the Respondent in February 2019, but had no information at all as to whether he was working or not. The current arrears had increased to £2795.65 to the end of May 2019.
10. Ms Christison further explained that to the best of her knowledge the Respondent still lived at the Property. She asked the Tribunal to grant an order for repossession.
11. The Tribunal noted the requisite Notice in terms of Section 11 of the Homelessness (Scotland) Act had been sent to Dundee City Council on 4 December 2018.

### **Findings In Fact**

12. The Applicant and the Respondent entered into a Private Residential Tenancy Agreement on 1 March 2018 in relation to the Property. In terms of Clause 8 the Tenancy Agreement the Respondent agreed to pay a monthly rent of £450 to the Applicant.
13. The Respondent had fallen into arrears of rent from June 2018.
14. The last payment to the rent account was of £46.15 on 4 February 2019.
15. On 4 December 2018 the Applicant served Notice to Leave on the Respondent by way of email. The Respondent had agreed that communication including the service of notices could be made by email.
16. There had been no communication from the Respondent or from Universal Credit, Housing Benefit or Dundee City Council to show that there had been any issues with any benefit that the Respondent may have been entitled to.
17. Arrears of rent as at the date of the application were £2228.85
18. A Notice in terms of Section 11 of the Homelessness (Scotland) Act had been sent to Dundee City Council on 4 December 2018.
19. Arrears of rent have increased to £2795.65 to the end of May 2019.

### **Reasons for the Decision**

20. Ms Christison provided evidence of non-payment of rent in the form of a rent statement. The Tribunal was satisfied on the basis of the rent statement and the supporting oral submissions made on behalf of the Applicant that the Respondent was in arrears of rent. The Tribunal was also satisfied the arrears

were not wholly or partially a consequence of the delay or failure of a relevant benefit. The Tribunal was satisfied that all appropriate paperwork had been served. The Tribunal was satisfied that Ground 12 of Schedule 3 of the 2016 Act had been established as the Respondent had failed to pay three consecutive months' rent and arrears were still in excess of one month.

### **Decision**

21. The Tribunal granted an order for recovery of possession.

### **Right of Appeal**

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Shirley Evans

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**Legal Member/Chair**

23 May 2019.  
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**Date**